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In re Application of: CHRISTIANSEN :
Appl. No.: 10/662,244 : DECISION ON PETITION
Filed: September 13, 2003 :
For: ALUMINUM CAN CRUSHING KIT :

This is a decision on the petition filed on July 15, 2005 by which petitioner request supervisory review of the Advisory action mailed July 7, 2005. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is denied.

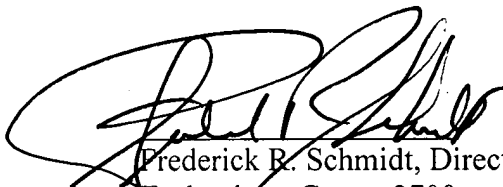
This application comes before the Technology Center Director for review of prosecution; in particular for review of the office letter (advisory action) of July 7, 2005. Petitioner quotes the office letter which states in part " 'A bottom cover which has an attached strike plate' ...is a new limitation [that] has never been claimed... as such limitation changes the scope of the previous claims; therefore it raises issues that would require further search. " Petitioner notes prior claim 3 of amendment A entered on March 1, 2005 and treated in the final rejection contained the language "...with a top cover and a bottom cover and an attached strike plate...". Petitioner submits that since the strike plate had been previously claimed, it does not raise a new issue that would require further search. Petitioner submits that his application is therefore in allowable form, which is construed to be the relief requested by the petition.

Review of the application and of the claims shows that on March 1, 2005 an amendment was entered presenting claim 3 containing the language "...an elongated container with a top cover and a bottom cover and an attached strike plate...". This language defines a container having these three elements and does not define any relation as to direct or indirect attachment of the strike plate to the container. This claim was fully treated in the final office action of May 18, 2005. The proposed after final amendment submitted by petitioner on May 26, 2005 contained the language "...an elongated container with a top cover and a bottom cover *which has* an attached strike plate...". This language defines a container having these three elements and further defines the strike plate to be attached (directly or indirectly) to the bottom cover. Clearly this requirement of the strike plate being attached to the bottom cover is new. That petitioner may have intended the claim to read this way prior and is therefore of the opinion that he has not changed the claim scope is not probative. Patent examiners are charged with giving the claims the broadest reasonable interpretation of the claim language in light of the specification and as

such claim draftsmanship requires great precision. In the instant application, a container having three elements is considered to be of different scope when compared to a container having two elements with one of the two elements having a third element attached.

Entry of amendments after final rejection is not a matter of right. 37 CFR 1.116. The review of the record shows that the examiner was in compliance with proper examining practice as set forth in MPEP 714.13 in refusing entry of the after final amendment submitted May 26, 2005. The examiner did not abuse his discretion or act in an arbitrary or capricious manner in denying entry of the proposed claims after final for the reasons stated. Further, claims 3 and 4 (pending) remain finally rejected under 35 USC 102(b) as being anticipated by the patent to Rodolico. Applications cannot be passed to allowance until a point in time where all objections and rejections are overcome. Therefore there is no basis for granting the relief requested.

PETITION DENIED.



Frederick R. Schmidt, Director
Technology Center 3700